

1-24-01 MS-01029

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Date 23-MAR-2001 10:34a  
Fee: 35.00 Check 538  
LOUISE C JONES, Recorder  
Filed By RKK  
For SOUTH EASTERN UTAH TITLE CO  
SAN JUAN COUNTY CORPORATION

WHEN RECORDED RETURN TO:  
DISTRICT ENGINEER  
U. S. ARMY ENGINEER DISTRICT  
ATTN: REAL ESTATE DIVISION  
1325 J STREET  
SACRAMENTO, CA 95814

### EASEMENT AND COVENANT TO RESTRICT USE

John Lobarth Johnson and Charlotte Johnson as Trustees of the John Lobarth Johnson and Charlotte Johnson Family Trust, dated September 2, 1994, hereinafter referred to as "Grantor," in consideration of the sum of **FOUR HUNDRED AND THIRTY SEVEN DOLLARS AND NO/100 (\$437.00)**, receipt of which is hereby acknowledged, do hereby grant, a perpetual and assignable easement interest and agree to further restrict the use of the easement areas as detailed in Exhibit A to the **UNITED STATES OF AMERICA**, hereinafter referred to as "Government," represented by the United States Department of Energy (hereinafter called "DOE") in, upon, over and across the property located in the County of San Juan (APN 34S24E047200), State of Utah, as shown on Assessor's Map at Exhibit B-1, the easement areas are defined in Exhibit C (hereinafter referred as "Property"), retention of the right of access over property described in Exhibit B is required to access easement area defined in Exhibit C, for the purpose described in Exhibit D.

#### A. Description of Facts:

A. 1. The Monticello Millsite (hereinafter "Millsite") was owned by the United States of America, and operated through various agencies from 1942 through 1959 for production of uranium and vanadium: after the Millsite ceased operations on January 1, 1960, tailings from the milling process were removed from the site through either natural processes or by human activity and contaminated properties in the vicinity of the Millsite.

A. 2. DOE has been charged with the responsibility of remediating the tailings at the Millsite and associated vicinity properties under Section 120 of the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Section 9601 et seq., (hereinafter "CERCLA") and pursuant to the terms of a Federal Facility Agreement (hereinafter "FFA") entered into between the United States Environmental Protection Agency,

South Eastern Utah  
Title Company

Order No. 25100-55

*[Handwritten signature]*

File 12

Region VIII hereinafter "EPA"), and the State of Utah Department of Health (hereinafter "State").

A. 3. The Grantor owns the property in the vicinity of the Millsite which DOE has determined to be contaminated with tailings.

A. 4. The Grantor and DOE wish to enter into this agreement to carry out the purposes of CERCLA and the FFA, and to protect the public health, safety and welfare.

B. Deed Restriction Requirement:

B. 1. DOE has determined that deed restrictions need to be imposed on the Property to ensure full protection of public health and the environment.

B. 2. The Grantor agrees that in order to protect the present and future public health and safety and the environment, the Property shall be used in such a manner as to avoid potential harm to persons or property which may potentially result from site development for or construction of any temporary or permanent habitable structures on the Property.

**ARTICLE I**  
**GENERAL PROVISIONS**

1.1. This agreement sets forth rights, conditions and restrictions upon the subject Property. Each and all of the rights, conditions and restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof.

1.2. By granting and accepting the terms and conditions of this agreement, the Government and Grantor, its successor and assigns, agree to be bound by said terms and conditions and agree that the Parties shall be entitled to specific performance of any of the provisions or conditions thereof in any court of competent jurisdiction if the curing of any violation has not occurred within thirty (30) days after the party has provided written notice to the violating party of said violations or deficiencies.

1.3. All purchasers, lessees, or possessors of any relevant portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in

accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions, as herein established, must be adhered to for the benefit of future owners and occupants and that their interest in the Property shall be subject to the Restrictions contained herein.

1.4. The Grantor agrees that the entire agreement set out herein shall be recorded and incorporated by reference in each and all deeds and leases of any portion of the Property. The agreement shall be recorded by the DOE in the San Juan County Recorder's office as set forth above.

1.5 This document shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind shall not be binding on either Party except to the extent incorporated in this agreement.

## **ARTICLE II**

### **RIGHTS, CONDITIONS AND RESTRICTIONS**

2.1. Said rights are conveyed subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

2.2. DOE, EPA, and the State, and their authorized representatives, contractors and subcontractors are granted retention of the right of access over remainder of Grantor's property, described above, to access the easement areas to perform inspection, surveillance, monitoring, characterization and assessment of the radiological contamination of the property, to carry out surface remedial action if determined necessary by DOE, and to take any other reasonable action consistent with the evaluation and performance of surface remedial action. Access will be coordinated as closely as possible with the Grantor, its successors or assigns, to minimize interference of their use and enjoyment of the property.

2.3. No site development for or construction of any temporary or permanent habitable structures may occur within the easement area. For the purposes of this agreement a "habitable structure" is defined as a structure that is suitable for person(s) to live or reside in.

2.4. The easement area shall not be used in such a way that will disturb or interfere with the integrity of any monitoring system.

2.5 Soils from the easement area shall not be removed from the area.

2.6. Grantor, its successor or assigns, shall provide a thirty (30) day advance notice to DOE of any sale, or other conveyance of the Property or an interest in the Property to a third person. DOE shall not have the authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law or by reason of this agreement.

2.7. Any violation of the agreement shall be grounds for DOE to take enforcement action, including the filing of an administrative, civil or criminal action, as provided by law, against the Grantor, its successor or assigns, subject to all applicable defenses.

### ARTICLE III REMOVAL OF RESTRICTIONS

3.1. The restrictions detailed in this agreement will be removed from the property or portions thereof when DOE has determined that the site meets regulatory standards, as determined by DOE, EPA, and the STATE OF UTAH; otherwise the restrictions and requirements of this agreement shall continue in effect in perpetuity.

### ARTICLE IV MISCELLANEOUS

4.1. Nothing set forth herein shall be constructed to be a dedication or offer of a gift or dedication of the Property or any portion thereof to the general public for any purposes.

4.2 Whenever any person gives or serves any notice, demand, or other communication with respect to this agreement, such notice, demand, or communication shall be in writing and shall be sent simultaneously to an authorized representative of the Grantor and to the DOE, in certified mail with return receipt requested.

4.3. If any portion of this agreement is determined to be invalid or unenforceable for any reason, the remaining portion of the agreement shall remain in full force and effect.

**TO HAVE AND TO HOLD** the rights hereby granted to the Government and its successors and assigns forever but without warranties of any kind by the Grantor, except that the Grantor affirmatively states they have received no claims to ownership from anyone since they acquired title to the property, and that they have not conveyed or incurred any liens against the property.

**IN WITNESS WHEREOF**, the Grantor and the Government execute this agreement as of the date set forth below.

1-24-01

DATE

"Grantor"

John L. Johnson - Trustee  
John Lobarth Johnson  
Trustee of the John Lobarth Johnson  
and Charlotte Johnson Family Trust  
dated September 2, 1994

Charlotte Johnson - Trustee  
Charlotte Johnson  
Trustee of the John Lobarth Johnson  
and Charlotte Johnson Family Trust  
dated September 2, 1994

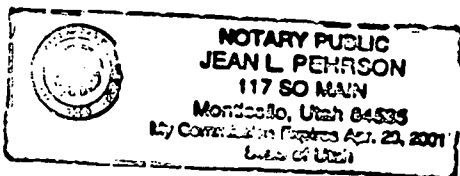
Subscribed and sworn to before me this 24th  
day of January 2001.

04-26-01

Comm. Expires

Jean L. Peterson  
Notary Public

Residing at Monticello, Utah



E 063255 B 793 P 0530

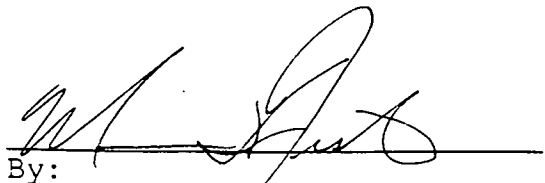
# CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the forgoing agreement over Tract No. 34S24E047200, County of San Juan, State of Utah, dated JAN. 24, 2001 from John Lobarth Johnson and Charlotte Johnson, Trustees of the John Lobarth Johnson and Charlotte Johnson Family Trust dated September 2, 1994 to the United States of America, is hereby accepted by the undersigned officer on behalf of the United States of America, and the Grantee consents to recordation thereof by its duly authorized officer.

DATED

1/29/01

By:



**MARVIN D. FISHER**  
Chief, Real Estate Division  
U.S. Army Engineer District, Sacramento

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

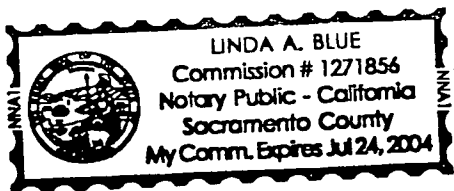
State of California

County of Sacramento

} ss.

On 26 February 2004, before me, Linda A. Blue, Notary Public  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")  
personally appeared Marvin D. Fisher  
Name(s) of Signer(s)

☒ personally known to me  
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Linda A. Blue  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Certificate of Acceptance

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER

Top of thumb here

## **Exhibit A**

### **EASEMENT ESTATE**

#### **1. RIGHTS, USE AND CONDITIONS**

DOE, EPA, and the State, and their authorized representatives, contractors and subcontractors are granted a right of entry in, across, and over the land described above to perform characterization and assessment of the radiological contamination of the property, to carry out surface remedial action if determined necessary by DOE, and to take any other reasonable action consistent with the evaluation and performance of surface remedial action. Access will be coordinated as closely as possible with the Johnson's to minimize interference of their use and enjoyment of the property.

#### **2. SPECIAL RESTRICTIONS ON LAND USE BY THE JOHNSONS**

No site development for or construction of any temporary or permanent habitable structures may occur. For the purposes of this agreement a "habitable structure" is defined as a structure that is suitable for persons to live or reside in.

#### **3. ENTIRE AGREEMENT**

This agreement shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind shall not be binding on either Party except to the extent incorporated in this agreement.

#### **4. BINDING EFFECT**

By granting and accepting this agreement, the DOE and the Johnson's agree to be bound by the terms of the rights granted and agree that the Parties shall be entitled to specific performance of any of the provisions or conditions thereof in any court of competent jurisdiction if the curing or any violation has not occurred within thirty (30) days after the party has provided written notice to the violating party of said violations or deficiencies.



5.        **REMOVAL OF RESTRICTIONS**

The restrictions detailed in this agreement will be removed from the above described lands when DOE has determined that the site meets regulatory standards, as determined by DOE, EPA, and the STATE OF UTAH.

**EXHIBIT B**

State of Utah, County of San Juan, and is described as follows:

T34S, R24E, SLBM, Section 4 APN: 34S24E047200

Beginning at the E1/4 corner of this Section 4, and running thence W 1320 feet, S2640 feet; E to the East rim of Vega Canyon; NE'ly along the rim of Vega canyon to a point which is 330 feet S of the E1/4 corner of this Section 4, N330 feet to point of beginning.

EXCEPTING therefrom all oil, gas and minerals.



EXHIBIT C

Location: Lower Montezuma Creek

Owner: John L. Johnson, as Trustee  
Charlotte B. Johnson, as Trustee  
(B.739, p.489)

Parcel Number: 34S24E047200

A parcel of land along Montezuma Creek within the E1/2 SE1/4 of Section 4, Township 34 South, Range 24 East, Salt Lake Base and Meridian, San Juan County, Utah; said parcel described as follows: Beginning at the Northwest corner of said Section 4 from whence the North quarter corner of Section 5 of said Township and Range bears S.89°55'04"W., 2,650.09 feet with all bearings contained herein referenced thereto; thence S.61°09'51"E., 5,478.88 feet, more or less, to a point on the North line of the E1/2 SE1/4 of said Section 4; and the True Point of Beginning; thence along the following thirteen (13) courses:

- 1.) S.47°54'41"W., 278.00 feet;
  - 2.) S.28°34'41"W., 146.97 feet;
  - 3.) South, 143.89 feet;
  - 4.) S.18°57'08"E., 82.79 feet;
  - 5.) South, 379.71 feet;
  - 6.) East, 172.19 feet;
  - 7.) North, 239.38 feet;
  - 8.) N.22°28'11"W., 128.13 feet;
  - 9.) North, 296.09 feet;
  - 10.) N.43°38'23"E., 102.89 feet;
  - 11.) N.77°28'38"E., 313.56 feet;
  - 12.) N.47°34'39"E., 179.57 feet, more or less, to a point on the North line of the E1/2 SE1/4 of said Section 4;
  - 13.) S.89°58'32"W., 403.16 feet along the North line of the E1/2 SE1/4 of said Section 4 to the True Point of Beginning.
- Said parcel containing 4.03 acres, more or less.

## EXHIBIT D

WHEREAS, the Monticello Millsite (hereinafter "Millsite") was owned by the United States of America, and operated through various agencies from 1942 through 1959 for production of uranium and vanadium; after the Millsite ceased operations on January 1, 1960, tailings from the milling process were removed from the site through either natural processes or by human activity and contaminated properties in the vicinity of the Millsite, and

WHEREAS, DOE has been charged with the responsibility of remediating the tailings at the Millsite and associated vicinity properties under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, (hereinafter "CERCLA") and pursuant to the terms of a Federal Facility Agreement (hereinafter "FFA") entered into with the United States Environmental Protection Agency, Region VIII (hereinafter "EPA"), and the State of Utah Department of Health (hereinafter "State"), and

WHEREAS, the Johnson's and DOE wish to enter into this agreement and agree to carry out the purposes of CERCLA and the FFA, and to protect the public health, safety and welfare.